IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION Nos. 3836 of 2004, 3820 of 2004,

7453 of 2004 and 7535 of 2004

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1)WRIT PETITION NO : 3836 of 2004

Between:

V.K.Siraj, S/o. V.K. Azeez Sab, Bus owner,
NMS Bus Service, 16-12-1A, Tippukhan Street, Hindupur,
Ananthapur District. … Petitioner

AND

1 State Transport Appellate Tribunal, Andhra Pradesh, Hyderabad
rep., by its Presiding Officer.
2 Regional Transport Authority, Ananthapur District, Ananthapur.
3 The Regional Manager, APSRTC., Ananthapur, Ananthapur District.
4 P.S. Jakeer Hussain, S/o.P.S.Jabbar, H.No.1-11-176, Abadpet,
Hindupur, Ananthapur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction, preferably one in the nature of Writ of Mandamus, declaring the order of the 1st respondent passed in A.P.No.424 of 2003 dated 10-02-2004 granting one pucca stage permit on new town service route-Hindupur Municipal Bus Stand to Kothapalli [via] Mothukapalli, Seva Mandir, Kodigepalle, Parigi, Dhanapuram, Seerepalli and Muddireddipalli in favour of the 4th respondent, as illegal, arbitrary and contrary to law and consequently set aside the same.

Counsel for the Petitioner:MR.V.NARASIMHA REDDY

Counsel for the Respondents 1 and 2 : GP FOR TRANSPORT

Counsel for the Respondent No.3: Mr.K.Srinivasa Rao, S.C. for APSRTC

Counsel for the Respondent No.4: Mr. T.Venkata Ramana

2)WRIT PETITION NO : 3820 of 2004

Between:

V.K.Siraj, s/o V.K.Azeez Sab,
Bus Owner, NMS Bus Service, 16-12-1A, Tippukhan Street,
Hindupur, Anantapur District.

..... PETITIONER

AND

1 State Transport Appellate Tribunal, Andhra Pradesh, Hyderabad
rep., by its Presiding Officer.
2 Regional Transport Authority, Anantapur District, Anantapur.
3 The Regional Manager, APSRTC, Anantapur, Anantapur District.
4 P.S.Jakeer Hussain, s/o P.S.Jabbar,
H.No.1-11-176, Abadpet, Hindupur, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, preferably one in the nature of writ of mandamus, declaring the order of the 1st respondent passed in A.P.No.425 of 2003 dated 10-02-2004 granting one pucca stage permit on new town service route-Hindupur Municipal Bus Stand to Kothapalli (via) Mothukapalli, Seva Mandir, Kodigepalle, Parigi, Dhanapuram, Seerepalli and Muddireddipalli in favour of the 4th respondent, as illegal, arbitrary and contrary to law and consequently set aside the same.

Counsel for the Petitioner: MR.V.NARASIMHA REDDY

Counsel for the Respondents 1 and 2 : GP FOR TRANSPORT

Counsel for the Respondent No.3: Mr.K.Srinivasa Rao, S.C. for APSRTC

Counsel for the Respondent No.4: Mr. T.Venkata Ramana

3) WRIT PETITION NO : 7453 of 2004

Between:

APSRTC, rep. by its Managing Director, Musheerabad, Hyderabad.

..... PETITIONER

AND

1 The State Transport Appellate Tribunal, Manoranjan Complex,
M.J.Road, Nampally, Hyderabad, rep.by its Presiding Officer.
2 Regional Transport Authority, Ananthapur Dt. at Ananthapur,
rep., by its Secretary.
3 P.S.Jakeer Hussain, S/o P.S.Jabbar,
D.No.1-11-176, Abad Pet, Hindupur, Ananthapur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction especially in the nature of Writ, order or direction, especially in the nature of Writ of Certiorari calling for the records relating to the impugned order dated 10-2-2004 made in AP 425/03 on the file of the State Transport Appellate Tribunal, A.P. Hyderabad in setting aside the order dated 7-6-2003 in item No.3 in Rc.No.5379/A2/2002 and directing issue of permit to 3rd respondent on the route Hindupur Municipal bus stand to Kothapalli and quash the same as being hit by the provisions of Section 68(3)(ca) and 104 of M.V.Act 1988.

Counsel for the Petitioner: MR.KALLAKURI SRINIVASARAO, S.C. for A.P.S.R.T.C.

Counsel for the Respondents 1 & 2 : GP FOR TRANSPORT

Counsel for the Respondent No.3: Mr. T.Venkata Ramana

4) WRIT PETITION NO : 7535 of 2004

Between:

APSRTC, rep by its Managing Director Musheerabad, Hyderabad.

..... PETITIONER

AND

1 The State Transport Appellate Tribunal, Manoranjan Complex,
M.J. Road, Nampally, A.P. Hyderabad -500 001,
rep by its Presiding Officer.
2 Regional Transport Authority, Ananthapur District at Ananthapur,
rep. by its Secretary.
3 P. S Jakeer Hussain S/o. P. S Jabbar
D.No.1-11-176, Abad pet Hindupur, Ananthapur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, especially in the nature of writ, order or direction, especially in the nature of writ of certiorari calling for the records relating to the impugned order dt 10-2-2004 made in AP424/2003 on the file of the State Transport Appellate Tribunal A.P., Hyderabad in setting aside the order dt 7-6-2003

in item No.3 in RcNo.5379/A2/2002 and directing issue of permit to 3rd respondent on the route Hindupur Municipal bus stand to Kothapalli and quash the same as being hit by the provisions of Section 68 (3) (ca) and 104 of M.V. Act 1988.

Counsel for the Petitioner: MR.KALLAKURI SRINIVASARAO, S.C. for A.P.S.R.T.C.

Counsel for the Respondents 1 & 2 : GP FOR TRANSPORT

Counsel for the Respondent No.3: Mr. T.Venkata Ramana

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

Writ Petition Nos. 3836 of 2004, 3820 of 2004,

7453 of 2004 and 7535 of 2004

COMMON ORDER:

Heard the learned counsel appearing for both parties and also the learned standing counsel Sri K.Srinivasa Rao, appearing on behalf of the Andhra Pradesh State Road Transport Corporation.

Since common question arises in these matters, they are all being taken up together for disposal.

These proceedings arise out of the applications filed by the contesting respondents herein seeking pacca stage carriage permits in respect of certain roads, which were initially rejected by the second respondent herein, mainly on the ground that the route in respect of which the said permits are sought, is a new route and there is a necessity of formulation by the government as contemplated under Section 68(3)(ca) of the Motor Vehicles Act, 1988 (for short, 'the Act') , and that permission of the Transport Commissioner is to be

obtained as per Rule 258(2) of the A.P. Motor Vehicles Rules, 1989 (for short, 'the Rules') since the route in question covers an extent of more than 8 KMs. As against such orders, on appeal, the Tribunal, having gone into chequered events, allowed the appeals holding that since vehicles are being plied in the route in question, it is an existing route and therefore, neither of the provisions has any application. Hence, these Writ Petitions both by rival operators and also by the Corporation.

The main contention urged on behalf of the Writ Petitioners through their counsel, and also the standing counsel is that as long as there is no route formulated under Section 68(3)(ca) of the Act, it can not be said that it is an existing route and that a route necessarily means as provided for under the aforesaid provisions and not otherwise.

The learned counsel appearing on behalf of the respondents sought to sustain the orders of the Appellate Tribunal on the ground that the finding as arrived at is purely that of fact and it is based on the fact that the said route is an existing one where the vehicles are being plied and therefore, there is no such requirement as contended on behalf of the petitioners.

Having considered their submissions and on perusal of material, the question which falls for consideration is as to whether the route in question can be called as an existing route for enabling the applicants to seek permits as sought for ?

There is no dispute in regard to the fact that on the applications filed by the respondents in respect of the route in question, initially the primary authority has rejected the same on the ground that the route in question is a new route and it is not covered by the provisions of the 68 (3) (ca) of the Act and also necessarily warrants permission as

contemplated under Rule 258(2) of the Rules, since the extent covered is more than 8 KMs. However, the Appellate Tribunal by taking into consideration the various permits granted earlier and also orders passed by this Court in some of the Writ Petitions, has held that the route applied is the same one as applied by other similar such operators and hence, it, being an existing route, there can not be any impediment in granting the permissions to the applicants. However, it is seen that except on facts, the Appellate Tribunal did not consider the provisions under Section 68(3) (ca) of the Act and the requirements as contemplated therein. Merely because certain permits were applied for and granted, would not make a route an existing route. The route contemplated should be the route as provided under law.

There is no dispute of the fact that the route applied for in these cases is not the one covered under Section 68(3)(ca) of the Act. A Full Bench of this Court, as per decision reported in *A.P.S.R.T.C., Musheerabad, Hyderabad V. State Transport Appellate Tribunal, Hyderabad & others* held that a route which is exclusively for town service can not become a route falling within the nationalised scheme, for the reason that mofussil stage carriage route traverses it for a long distance. Reliance is also placed on the decisions of the Supreme Court reported in *C.Kasturi & others V. Secretary, Regional Transport Authority & another*; *A.P.S.R.T.C., etc. V. State Transport Appellate Tribunal & others;* and *Jagdip Singh V. Jagir Chand & another.* Across the bar, it is also pointed out that as against the decision of this Court, an appeal is still pending in the Supreme Court. It is seen that in these matters, this court has granted interim suspension pending all these Writ Petitions. Having regard to the same and especially in view of the fact that the short question as involved is not properly considered and decided by the Appellate Tribunal, it is felt desirable that the matter should be reconsidered by the Appellate Tribunal not only on facts but also under the provisions of the Motor Vehicles Act in respect of the question as to whether

there is an existing route as provided for under law or not.

In the circumstances, the Writ Petitions are allowed. The impugned orders are set aside. The matter is remitted back to the Appellate Tribunal for fresh consideration and disposal in accordance with law after giving notice to both the sides.

(B.Prakash Rao,J.)

01.12.2004.

DRK

Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the First day of December, two thousand and four.

Assistant Registrar

/TRUE COPY/

Section officer

Copy to:

1) The Presiding Officer, State Transport Appellate Tribunal, Manoranjan complex, M..Road, Nampally, Andhra Pradesh, Hyderabad-500 001.

2) The Secretary, Regional Transport Authority, Ananthapur District, Ananthapur.

3) The Regional Manager, APSRTC., Ananthapur, Ananthapur District.

4) Two CCs to the G.P. for Transport, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5) Two CD copies.